Hate Thy Neighbor: Violent Racial Exclusion and the Persistence of Segregation

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This Article addresses one of the consequences of racial segregation in housing—violence and intimidation directed at minorities who are integrating white neighborhoods. In describing the history and dynamics of this type of anti-integrationist crime, the Article seeks to offer an introduction to the setting of hate crimes in a neighborhood context. The Article provides a critical bridge between hate crime law and housing law, exploring the substantial difficulties when each of these legal remedies is used to combat this type of violence. The Article concludes by offering a series of solutions uniquely crafted to combat the problem of bias-motivated violence in the neighborhood context.

"People who will burn a cross will burn a church . . . ." [1]

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[1] NIKKI GIOVANNI, *A Greater Love of God and Country*, *in* LOVE POEMS 44 (1997).

I. INTRODUCTION

The night after a Black family moved into their new house in a predominately Italian neighborhood, a mob of roughly one thousand whites, who had been rioting in a nearby park, surrounded the family's house and began to throw stones, breaking the windows.[2] The following evening, two hundred teenagers gathered close to the family's home shouting, "We want blood."[3]

Soon after Mattie Harrell and her family moved to a new neighborhood in Vineland, New Jersey, a man fired four rounds from a .22-caliber gun at the house.[4] The first bullet pierced the wall near Harrell's 8-year-old son's bed.[5] The perpetrator, a white man, later told police that he had fired at the house because he wanted to let Ms. Harrell and her family, the first African-Americans to move to the neighborhood, know that they were not wanted.[6] The Harrells stayed, but several years after the incident they were still the only African-American family living in the neighborhood.[7]

What can be made of these two incidents? Though they are similar in that they both involve Blacks who have moved into all-white neighborhoods, what is perhaps most interesting about them is that nearly forty years separate the two incidents. The first occurred in the late 1950s, the second in 1994. Though assumed by many to be a relic of this country's long-dead history, violence directed at racial and ethnic minorities who have moved to white neighborhoods is not uncommon. In fact, scenarios like the ones described above are so common that scholars have coined a term, "move-in violence," to describe acts of violence

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[2] For a discussion of this and other incidents of anti-integrationist violence in Chicago occurring in the late 1950s, see Amanda Seligman, BLOCK BY BLOCK: NEIGHBORHOODS AND PUBLIC POLICY ON CHICAGO'S WEST SIDE 167 (2005).

[3] *Id.*

[4] *See* Maria Newman, *Victim of Hate Crime Calls High Court Ruling a 'Slap in the Face.'*, N.Y. TIMES, June 27, 2000, at B5. Five incidents of gunshots against the Harrell's house were eventually attributed to Charles Apprendi, a pharmacist living about a mile away on the same street. After Mr. Apprendi was convicted under New Jersey's hate crime law and sentenced to 12 years in prison, the Supreme Court struck down a part of New Jersey's penalty enhancement law on the grounds that the question of Mr. Apprendi's bias motivation was a question of fact that needed to be submitted to the jury. *See* Apprendi v. New Jersey, 530 U.S. 466 (2001). Ms. Harrell called the Supreme Court ruling "a slap in the face." Newman, *supra*, at B5.

[5] Newman, *supra* note 4, at B5.

[6] *Id.*

[7] *Id.*

and intimidation directed at racial and ethic minorities integrating white neighborhoods.[8]

Incidents like those described above are not what we traditionally think of as bias-motivated violence or "hate crimes"—crimes motivated by prejudice on the basis of race, religion, or sexual orientation. Nevertheless they clearly fit into the paradigm created for this type of act—particularly when motivated by racial prejudice. In conforming to this picture, such incidents represent a new and compelling frontier in this recently created category of crime. This Article describes the new frontier in bias-motivated violence and argues that move-in violence constitutes a not yet considered justification for the category of bias-motivated crime.

In Part II of the Article, the history and dynamics of move-in violence are analyzed. In this section, I provide a brief history of move-in violence and offer an introduction to the setting for hate crimes in the neighborhood context. In Part III, I analyze the legal landscapes—hate crimes law, federal civil rights law, and fair housing law—the host of contemporary prohibitions aimed at neighborhood-based hate crimes. This section also explores the myriad difficulties created when each of these legal remedies is used to combat violence in this particular context. In Part IV, I explore the possible link between hate crime and housing segregation, suggesting that move-in violence and its consequences may offer a previously unexplored justification for hate crime legislation as a whole. In Part V, I offer suggestions for addressing move-in violence, and, as a result the problem of segregation.

II. HATE CRIMES IN THE NEIGHBORHOOD CONTEXT

Actions directed at families like the Harrells seem weirdly anachronistic for several reasons. The latest Census data shows, for example, that racial and ethnic minorities comprise an increasingly large portion of the U.S. population.[9] Increasing racial and ethnic diversity has also been met with increases in tolerance, survey research reveals.[10] Despite these gains, there are widening gaps in the housing experiences of people of color and whites, which lead to spaces ripe for move-in violence.

One of the most commonly understood justifications for the creation of these white neighborhood spaces is the phenomenon of "white flight," where large numbers of middle and upper class white people flee neighborhoods in search of

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[8] JACK LEVIN & JACK MCDEVITT, HATE CRIMES: THE RISING TIDE OF BIGOTRY AND BLOODSHED 246 (1993).

[9] THE LEWIS MUMFORD CENTER, ETHNIC DIVERSITY GROWS, NEIGHBORHOOD INTEGRATION LAGS BEHIND (2001), http://mumford.albany.edu/census/WholePop/WPreport/page1.html.

[10] *See, e.g,*. HOWARD SCHUMAN ET AL., RACIAL ATTITUDES IN AMERICA, TRENDS AND INTERPRETATIONS 74–75 (1985) (depicting public opinion data showing increasing white support for racial intermarriage and school integration).

new spaces that are predominately white. "White flight,"[11] has occurred in large cities across the country when minorities, particularly African-Americans seeking better housing, moved to white neighborhoods.[12] Not all whites who were reluctant to live near minorities immediately moved elsewhere when minorities moved in; some individuals made the decision to stand and fight. Confronted with their neighborhood's changing racial dynamics, whites in such neighborhoods "blocked the penetration as if defending against a foreign enemy, using any means at their disposal to deter the migration."[13]

In this Article, I argue that the problem of violence directed at minorities in white neighborhoods extends beyond the weeks immediately following their move to a new neighborhood. The scope of violence directed at minorities particularly over the past twenty years includes acts of violence, threats and harassment that have been specifically aimed at forcing out Blacks, Asian, Latino and Middle-Eastern residents who are not necessarily newcomers out of the predominately white neighborhoods to which they have moved. I lump such violence, along with move-in violence, under the broad category "anti-integrationist violence."

A. *Minority Integration from the African-American Great Migration until the Fair Housing Act*

African-American populations in northern cities exploded after the Great Migration of Southern Blacks. In New York, for instance, between 1890 and 1910, more than 60,000 Blacks moved to New York City, tripling the number of Black residents.[14] During the same time, Philadelphia's Black community grew by more than two and one half times, reaching roughly 200,000 people, or 11% of the population.[15] The sudden influx of African-Americans was also greatly felt in Chicago, which by 1930 had the second-largest Black population of any city in the United States.[16]

The increase in the number of African-Americans put great pressure on the tiny number of neighborhoods to which minorities were relegated. The earliest

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[11] Research on "white flight" suggests that this phenomenon was exacerbated by unscrupulous "blockbusters"—real estate speculators intent on exploiting the "deep-seated fears of white homeowners who dreaded Black encroachment on their turf"—for profit. *See, e.g.*, THOMAS J. SUGRUE, THE ORIGINS OF URBAN CRISIS, RACE AND INEQUALITY IN POSTWAR DETROIT 195 (1996).

[12] People of color who are victims of move-in violence were often motivated to move to a white neighborhood to improve their life chances. Research has suggested that benefits accrue to individuals who move out of poor neighborhoods. *See* Kathleen C. Engel, *Moving up the Residential Hierarchy: A New Remedy for Old Injury or Arising from Housing Discrimination*, 77 WASH. U. L. Q. 1152, 1153–58 (1999).

[13] STEPHEN GRANT MEYER, AS LONG AS THEY DON'T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS 6 (2000).

[14] *Id.* at 16.

[15] *Id.*

[16] *Id.* at 32.

efforts at violent resistance to minority move-ins came as whites resisted attempts by African-Americans to move out of overcrowded, "Black Belts" in large cities in the Midwest and Northeast.

Resistance to such moves by African-Americans, which began in the 1920s, took a variety of forms. Large conflicts like housing riots in Chicago in 1919 and 1966, Detroit in 1942,[17] and Cicero, Illinois in 1951, are well documented.[18] White hostility was of paramount importance in determining where Blacks lived; white animosity—often in the form of violence—restricted Blacks' housing choices.[19] For instance, in Detroit in 1942, when city and federal officials designated the Sojourner Truth housing project for Black war workers, white residents from the area ignited in protest.[20] When the first Black family moved in, Black supporters and their white opponents clashed—at least 40 were injured, and 220 were arrested.[21]

Though in this early era of widespread minority integration organized civil disorder was a powerful weapon used by white opponents of minority integration, individualized threats directed at minority homeowners were also used. Such resistance against African-American integration occurred as "thousands of small acts of terrorism."[22] Newcomers suffered harassment in the form of broken windows, anonymous threats, fire bombings and other types of vandalism designed to drive them out.[23] The experience of the Wilsons, who bought a home in a white neighborhood on Detroit's northeast side in 1955, serves as a representative case in point.[24] Soon after the Wilsons closed on their house, angry white neighbors targeted the family as part of a five-month siege of harassment.[25] Just before they moved in, a vandal broke into the house, turned on all the faucets, and blocked the kitchen sink, flooding the basement.[26] Black paint was splashed on the walls and floors.[27] After the Wilsons had cleaned up the mess and left, someone broke all the front windows in the house.[28] A few weeks later someone threw a stone through the bathroom window.[29] Over the course of the next several months,

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[17] SUGRUE, *supra* note 11, at 73–74.

[18] *See* MEYER, *supra* note 13, at 6.

[19] ARNOLD R. HIRSCH, MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO 1940-1960 (1983).

[20] SUGRUE, *supra* note 11, at 73.

[21] *Id.* at 74.

[22] MEYER, *supra* note 13, at 6.

[23] *Id.* at 59.

[24] SUGRUE, *supra* note 11, at 232–33.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] SUGRUE, *supra* note 11, at 232–33.

individuals threw eggs, rocks and bricks at the Wilsons' windows, threw paint at the front of house, and even put snakes in the basement.[30] The attacks continued until the Wilsons moved out.[31]

The violence of the type and intensity as that leveled at the Wilsons was by no means unusual in the period between World War II and the 1960s. In Detroit, Chicago, St. Louis, Boston, and many other cities in the Midwest and Northeast, white residents motivated by a mixture of fear, anger, and desperation violently resisted African-American moves into their neighborhoods.[32]

B. *Move-in Violence after the Passage of the Fair Housing Act*

Prior to the 1960s, move-in violence was the most visible of several mechanisms aimed at preventing minority integration. In response, civil rights organizations including the NAACP mounted a campaign against a variety of legal and extralegal barriers to open housing—racial covenants,[33] race-based zoning practices, housing discrimination, and real estate brokers' racialized steering practices.[34] These campaigns resulted in the Fair Housing Act of 1968,[35] which broadly outlaws discrimination on the basis of race, national origin, color, and religion in the sale, rental, and occupancy of housing.

The passage of fair housing legislation did not end the extralegal violence directed at minorities who had moved to white neighborhoods. In cities across the country violence continued to occur on the color line. One of the most publicized incidents of anti-integrationist violence since the passage of the Fair Housing Act occurred in the Boston area in 1976, when Otis and Alva Debnam, the first Blacks to purchase a home in their Irish neighborhood, were confronted by white neighbors who mounted a campaign of racial intimidation, violence, and vandalism against them.[36] Similarly, a full decade later in Chicago, of the 1,129 hate crimes reported between 1985 and 1990, half were located in neighborhoods undergoing racial change.[37]

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[30] *Id.*

[31] *Id.*

[32] *See* Leonard S. Rubinowitz & Imani Perry, *Crimes Without Punishment: White Neighbors' Resistance to Black Entry*, 92 J. CRIM. L. & CRIMINOLOGY 335, 416–20 (2002) (documenting individual acts of move-in violence between 1910 and 1959). *See generally* MEYER, *supra* note 7; SUGRUE, *supra* note 5; REYNOLDS FARLEY ET AL., DETROIT DIVIDED (2000); HIRSCH, *supra* note 19.

[33] Shelley v. Kraemer, 334 U.S. 1 (1948) (holding that the enforcement of racial covenants, private agreements limiting the sale, lease or occupancy of housing to members of a particular race violated the 14th Amendment).

[34] Meyer, *supra* note 13, at 22–29.

[35] The Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified at 42 U.S.C. §§ 3601-19, 3613 (1968)).

[36] DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION IN THE MAKING OF THE UNDERCLASS 91 (1993).

[37] *Id.* at 90.

Research on move-in violence has suggested that the experiences of families like the Debnams are not just anecdotal.[38] A special report published in 1987 by the Klanwatch Project of the Southern Poverty Law Center documented 45 cases of arsons and cross burnings directed at minorities who had moved to mostly white neighborhoods in cities and suburban area in the mid-to late 1980s.[39] In addition to the cross burnings and arson, the report documented hundreds of acts of vandalism and intimidation (i.e., threatening phone calls and letters) directed at preserving housing segregation.[40]

Besides describing the character of the violence, the Klanwatch report noted several other important hallmarks of the violence. First, only a minority of these neighborhood-based hate crimes were committed by avowed white supremacists. According to the report, in cases where the perpetrators could be identified, "the perpetrators of these attacks are rarely found to be card carrying racists."[41] The report also highlighted the broad geographic diversity of move-in violence, finding it as prevalent in the North, Midwest and the West as in the South. "Since 1985 a majority of the 45 known arsons and cross burning attempts against move-ins have taken place in metropolitan areas of the North and Midwest."[42] The report noted that the only death associated with move-in violence—a 66-year-old Black woman who died as a result of the arson of her home—occurred specifically in the Midwest, in Cleveland.[43]

Other research on move-in violence has also highlighted the importance of shifting one's focus away from the South, which has been traditionally associated with racial violence. In fact, there have been several studies of neighborhoods in New York City in the 1980s and 1990s, which describe the violent resistance mounted by whites to Blacks moving into white neighborhoods.[44] One of the most detailed studies of bias-motivated crime in the 1980s and 1990s suggested that white resistance to minority incursions in New York City was not limited to

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[38] *See, e.g.*, JEANNINE BELL, POLICING HATRED (2004) (documenting move-in violence directed at minorities moving to white neighborhoods in "Center City."); LEONARD S. RUBINOWITZ & JAMES E. ROSENBAUM, CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA CHICAGO (2000); Rubinowitz & Perry, *supra* note 32, at 401–09 (describing acts of move-in violence directed at minorities in Chicago, Vidor, Texas, and Boston in the 1980s and 1990s).

[39] *See* SOUTHERN POVERTY LAW CENTER, MOVE-IN VIOLENCE: WHITE RESISTANCE TO NEIGHBORHOOD INTEGRATION IN THE 1980S (1987).

[40] *Id.*

[41] *Id.* at 2.

[42] *Id.*

[43] *Id.* at 3.

[44] *See, e.g.*, Howard Pinderhughes, *The Anatomy of Racially Motivated Violence in New York City: A Case Study of Youth in Southern Brooklyn*, 40 SOC. PROBS. 478 (1993); JONATHAN REESER, CANARSIE: THE JEWS AND ITALIANS OF BROOKLYN AGAINST LIBERALISM (1985); Donald P. Green et al., *Defended Neighborhoods, Integration and Racially Motivated Crime*, 104 AM. J. SOC. 372 (1998).

African-Americans moving in.[45] This study, focused on neighborhoods in New York City, found that increases in anti-Black, anti-Latino, and anti-Asian crime followed the movement of Blacks, Latinos and Asians into white neighborhoods.[46] In that study, the largest proportion of anti-minority hate crimes in the city were committed in the white neighborhoods to which minorities were moving.[47] While a precise motive for this behavior was beyond the scope of their research, the study's authors hypothesized that racism, nostalgia, and perceived self-interest, in conjunction with "exclusionary sentiment and tacit support (or active encouragement) of neighbors leads to a heightened propensity for action when racial homogeneity is threatened."[48]

Contemporary incidents of anti-integrationist violence have their roots in a sordid history of attempts to prevent minority integration of white neighborhoods. Though the earliest years of the minority integration were peaceful, in the 1920s with the onset of the great African-American Migration, the presence of African-Americans and sometimes other minorities became much more controversial. Right after the Great Migration, from the 1920s through the passage of the Fair Housing Act, violent resistance to African-Americans moving to white neighborhoods in the North and Midwest was organized and often, but not always, involved mob violence.[49] Since the passage of the Fair Housing Act, such violence has decreased and also changed its format. Demonstrations involving hundreds of neighbors have been replaced by a barrage of small acts directed at families in their new homes—slashed tires, burnt crosses, broken windows, and racial slurs. Frequently, in response to this "death by a thousand cuts," the family gets the message and leaves the neighborhood.

III. LEGAL REMEDIES FOR MOVE-IN VIOLENCE

One is entirely free not to like one's neighbors. However, committing a crime against a newcomer because you do not like people of their race living in your neighborhood is sanctioned by the general criminal law and may also violate state and federal fair housing and/or civil rights law, and state or local hate crime statutes, which often prohibit violence on the basis of race, religion or sexual orientation. The various remedies, federal and state, are described below.

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[45] Green et al., *supra* note 44, at 397.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] MEYER, *supra* note 13, at 6 (describing racial conflict over Blacks moving to white neighborhoods was expressed both in the form of riots and as "small acts of terrorism").

A. *Federal Remedies for Anti-integrationist Violence*

1. Civil Rights Actions

Violence directed at individuals pursuing their rights to housing comprises the majority of cases of racial violence prosecuted by the Department of Justice.[50] The most common federal civil rights statutes that may be used to prosecute anti-integrationist violence are found in § 241 of U.S. Code Title 18.[51] Section 241, passed during Reconstruction after the Civil War, punishes conspiracies to "injure, oppress, threaten, or intimidate any person in any State, Territory, or Commonwealth, Possession or District in the free exercise or enjoyment of" rights protected under the U.S. Constitution and federal law.[52]

In hate crime cases prosecuted under § 241, the prosecution must demonstrate that the victim was engaging in a federally protected right with which the perpetrators interfered.[53] This may be challenging in some hate crime cases,[54] but not in those involving anti-integrationist violence because such incidents are directed at individuals in and around their homes. When § 241 is used to punish anti-integrationist violence, the federally protected activities include one's right to use property or housing under Title 42 of the U.S. Code. ("Property Rights of Citizens").[55] Title 42 mandates that "all citizens . . . shall have the same right, in

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[50] *See* Southern Poverty Law Center, TERROR IN OUR NEIGHBORHOODS: HATE CRIMES LAW 189 (2006).

[51] Sections 242 and 245 of Title 18 are often described in the same breath as § 241 and section 3631 of the Fair Housing Act. Section 242 is designed to punish anti-integrationist violence which is committed, "under color of law,"—by law enforcement officials acting in their official capacity. 18 U.S.C. § 242 (1948). I have not dealt with it here because in the vast majority of cases, anti-integrationist violence is committed by one's neighbors. Section 245, the most specific of the federal legislation aimed at bias-motivated conduct, was enacted in 1968 in response to violence directed at Blacks and other civil rights workers. It prohibits the use of "force or threat of force" to interfere with an individual's participation in Federal or protected activities because of his or her "race, color, religion or national origin." 18 U.S.C. § 245(b)(2) (1968). Section 245 was enacted simultaneously with the Fair Housing Act. The sections that would be used to prosecute anti-integrationist violence are almost identical to section 3631 of the Fair Housing Act, described *infra* Part III.A.2. Thus, the notes to § 245 indicate that it does not cover actions that could be reached under the Fair Housing Act of 1968, 82 Stat. 73 (codified at 42 U.S.C.S. §§ 3601–19, 3631 (1968)).

[52] 18 U.S.C. § 241 (1948).

[53] *Id.* The relevant text indicates that §241 protects "the free exercise or enjoyment of any right or privilege secured . . . by the Constitution or laws of the United States."

[54] *See, e.g.*, United States v. Allen, 341 U.S. F.3d 870 (9th Cir. 2003), *cert. denied*, 41 U.S. 975 (2004). In *Allen*, the Court identified a local public park which had been a space for performances, exhibitions, and other sources of entertainment as a public accommodation for the purposes of 42 U.S.C. § 2000(a) in order to uphold the conviction of a neo-Nazi group for interfering with federal rights at the park.

[55] 42 U.S.C. § 1982 (2000).

every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."[56]

Federal civil rights law under Title 18 is best recognized for its use to prosecute the Ku Klux Klan or for its use in famous civil rights cases, such as the 1964 murders of civil rights workers Michael Schwerner, James Earl Cheney, and Andrew Goodman.[57] It has also been used to punish anti-integrationist violence. For instance, § 241 has been used in many instances to punish those who burned crosses in attempts to drive Black families from their homes.[58]

United States v. Callahan[59] serves as a representative case of the use of § 241 to prosecute anti-integrationist violence. In this case Vincent J. Callahan was charged under § 241 with having conspired with two others to burn down a house that had just been vacated by Charles Williams and Marietta Bloxom, a Black couple, and their daughter. The violence directed at Williams and Bloxom was part of a concerted effort to drive Blacks from the neighborhood. In mid-November 1985, Williams and Bloxom had moved to Elmwood, a working-class white neighborhood in Philadelphia. About a week after Williams and Bloxom moved in, 400 demonstrators gathered outside of their home, shouting racial slurs and demanding the couple leave.[60] Frightened, the family decided to do just that. Ironically, they were in the process of moving out when the house was set on fire. Two and a half weeks after William and Bloxom moved in, Gerald and Carol Fox, an interracial couple, and their children moved in three blocks from the Williams-Bloxom house.[61] The Foxes were also subjected to racial slurs, epithets, vandalism, and demonstrations by local residents urging the Foxes to leave.[62]

2. The Federal Fair Housing Act

Because of the housing-based context of anti-integrationist move-in violence, the most common federal remedy is prosecution under § 3631 of the Federal Fair Housing Act.[63] The Fair Housing Act (FHA), enacted simultaneously with § 245 of Title 18 as part of the Civil Rights Act of 1968, is specifically aimed at

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[56] *Id.*

[57] United States v. Price, 383 U.S. 787 (1966).

[58] *See, e.g.*, United States v. McDermott, 29 F.3d 404 (8th Cir. 1994); United States v. Lee, 6 F.3d 1297 (8th Cir. 1993); United States v. Gresser, 935 F.2d 96 (6th Cir. 1991); United States v. Skillman, 922 F.2d 1370 (9th Cir. 1990); United States v. Stewart, 806 F.2d 64 (3d Cir. 1986); United States v. Wood, 780 F.2d 955 (11th Cir. 1986); United States v. Redwine, 715 F.2d 315 (7th Cir. 1983).

[59] 659 F. Supp. 80 (E.D. Pa. 1987).

[60] *Fire Set in Philadelphia House Vacated by Blacks*, L.A. TIMES, Dec. 14, 1985 at 16.

[61] George Esper, *Racial Protest Splits Urban Neighborhood: Philadelphia Black Couple Forced to Move, Interracial Pair Plan to Stay Despite Threats*, L.A. TIMES, Dec. 29, 1985, at 5.

[62] *Id. See also Callahan*, 659 F. Supp. at 80.

[63] 42 U.S.C. § 3631 (1968).

discriminatory housing practices, including anti-integrationist violence. It prohibits interfering on the basis of race, color, religion, sex, disability, familial status, or national origin with an individual's right to buy, sell, or rent housing.[64] Section 3631, added to the FHA during debate in the Senate, provides broad protection designed to cover almost any type of intimidation leveled at individuals in their homes. This section prohibits an individual acting "by force or threat of force" from willfully injuring, intimidating or interfering with:

> (a) any person because of his race, color, religion, sex, handicap . . . , familial status, . . . or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings.[65]

Section 3631 has been used to prosecute traditional acts of move-in or anti-integrationist violence such as cross burnings, fire bombings, vandalism, assaults, and threats occurring in and around victims' dwellings.[66] Many of the cases prosecuted under § 3631 fit the typical pattern for move-in violence. In other words, they involve actions targeted at racial and ethnic minorities—primarily[67] African-Americans, Asian-Americans and Latinos—whose moves to all-white neighborhoods prompted violent responses.[68]

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[64] 42 U.S.C. § 3601–19, 3631 (1968).

[65] 42 U.S.C. § 3631(a) (1968).

[66] *See, e.g.*, United States v. May, 359 F.3d 683 (4th Cir. 2004) (cross burning); United States v. Anzalone, 555 F.2d 317 (2d Cir. 1977) (arson and vandalism); United States v. Gilbert, 884 F.2d 454 (9th Cir. 1989) (threats); United States v. Wood, 780 F.2d 955 (11th Cir. 1986), *cert. denied*, 476 U.S. 1184 (1986) (assault).

[67] Whites can and have been targeted for race-based hate crimes that have been prosecuted under § 3631. Unlike cases involving Asians, Blacks and Latinos, the majority of cases involving white victims do not however fit the typical pattern of move-in violence, that is, they are not situations in which whites are the racial minority and are being driven from the neighborhood for racial reasons. Situations in which whites are the victim often involve attacks against them by other whites because of their association with minorities. *See, e.g.*, United States v. May, 359 F.3d 683 (4th Cir. 2004) (cross burned on lawn of white woman who lived with a Black man); United States v. Sheldon, 107 F.3d 868 (4th Cir. 1997) (unpublished table decision) (defendant convicted for burning a cross on the front lawn of an interracial couple's house); United States v. Hayward, 6 F.3d 1241 (7th Cir. 1993) (defendant convicted under § 3631 for burning two crosses on the property of a white family who had entertained Black friends); United States v. Gilbert, 884 F.2d 454 (9th Cir. 1989) (defendant convicted under § 3631 for sending letters aimed at discouraging the white head of an adoption agency from promoting the placement of Black and Asian adopted children with white families); United States v. Wood, 780 F.2d 955 (11th Cir. 1986), *cert. denied*, 476 US 1184 (1986) (defendant convicted for breaking into interracial couples' homes and assaulting them because of their relationship); United States v. Johns, 615 F.2d 672 (5th Cir. 1980), *cert. denied*, 449 United States 829 (1980) (defendant terrorized members of an interracial couple).

[68] *See, e.g.*, United States v. Magleby, 241 F.3d 1306 (10th Cir. 2001) (cross burning at home of interracial family); United States v. Hartbarger, 148 F.3d 777 (7th Cir. 1998) (cross burning in

Though a conviction under § 3631 does not require proof that the defendant intended to drive the victims out of the neighborhood,[69] in many of the cases prosecuted under the statute, defendants' intentions seem clear. For instance, one rather typical case prosecuted under § 3631, *United States v. Redwine*, involved the Williams, a Black family who moved into an all-white neighborhood in Muncie, Indiana.[70] Immediately upon moving in, they suffered threats that their home would be burned, as well as rocks and bottles thrown against the house and into the home.[71] The couple and their four children moved out a month later, after the house was firebombed.[72] Evidence of defendant Samuel Redwine's motivation came from testimony that he had stated on several occasions that the Black family "shouldn't be there" and should be "run out."[73] As in *Redwine*, in other cases the defendants' own statements frequently serve as evidence that they manifested the requisite racial motivation and intention to interfere with the victim's rights.[74]

As could be expected, incidents of move-in and anti-integrationist violence have a terrible emotional impact on the families that are targeted. Frequently, after a cross is burned or there is another incident directed at the family in their homes, all family members experience significant trauma.[75] In the case of Mattie Harrell, whose story is mentioned at the beginning of this article, the crime, she later recounted, "tore the whole family up. We will never be the same."[76] Harrell said that she and her husband divorced, in part as a result of the stress caused by the hate crime.[77]

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front of trailer of interracial couple because defendant did not want them in his surroundings); United States v. Redwine, 715 F.2d 315, 315 (7th Cir. 1983) (after a Black couple moved into the all-white neighborhood approximately a block and a half away from defendants' homes, the defendants engaged in conduct intended to get the Black couple to move out); United States v. Anzalone, 555 F.2d 317 (2d Cir. 1977) (vandalism and arson directed against a Black family that intended to move into a house).

[69] *See, e.g.*, *Wood*, 780 F.2d at 955 (holding that a defendant's actions need not be designed to force the victim to move).

[70] 715 F.2d 315, 316 (1983).

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *See, e.g.*, United States v. Montgomery, 23 F.3d 1130, 1132 (7th Cir. 1994) (evidence of defendant's motivation for burning a cross in front of a shelter for homeless Black veterans included discussions that the defendant said the home housed "niggers" and that he wanted to burn a cross in order to scare the Blacks who lived at the shelter); United States v. Hayward, 6 F.3d 1241, 1241 (7th Cir. 1993) (evidence of defendant's motivation for burning a cross in front of the Jones' house was that they got it because "niggers" and "coons" were staying with a white family); United States v. McInnis, 976 F.2d 1226 (9th Cir. 1992) (evidence of defendant's motivation came at least in part from his shouting, "all niggers must die," after shots rang out).

[75] *See, e.g.*, Laura J. Lederer, *The Case of the Cross Burning, An Interview with Russ and Laura Jones*, *in* THE PRICE WE PAY 27, 28 (1995) (describing anger and fear after the cross burning).

[76] Newman, *supra* note 4.

[77] *Id.*

Often, in cases of anti-integrationist violence it is the children who are hit the hardest. In Mattie Harrell's case, the shotgun blast directed at her house tore into the wall near where her eight-year-old son would have been sleeping.[78] Though her son escaped injury, for several years afterward he had trouble sleeping.[79] In the case of the Smalls, a Black family living in an isolated all-white rural area in northwest Florida who had a cross burned on their lawn, their two teenage children decided to join the military several months after the cross burning, at least in part "to escape the racial bigotry that the cross-burning represented."[80]

3. Federal Sentence Enhancements

When there are charges at the federal level, Congress has passed two types of penalty enhancement statutes which have been applied to anti-integrationist violence. The first hate crimes sentence enhancement was passed as part of the Violent Crime Control and Law Enforcement Act of 1994.[81] It allowed the federal sentencing guidelines to be amended to provide hate crime penalty enhancement. The U.S. Sentencing Guidelines § 3A1.1(a) allows for victim-related adjustment for any federal offense, even for crimes not prosecuted as hate crimes, that were committed with bias motivation.[82] This section mandates:

> If the finder of fact at trial or, in the case of a plea of guilty or *nolo contendere*, the court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense of conviction because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person, increase by 3 levels.[83]

The vulnerable victim provision of the U.S. Sentencing Guidelines can also be used in cases of anti-integrationist violence. This provision allows for an increase of two levels if the defendant knew or should have known that the victim was a "vulnerable victim."[84] A vulnerable victim is one who is "unusually vulnerable" due to a particular susceptibility to criminal conduct.[85] In a move that is not surprising given the threat that anti-integrationist violence inspires, most of the

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[78] *Id.*

[79] *Id.*

[80] United States v. Long, 935 F.2d 1207, 1211 (11th Cir. 1991).

[81] Pub. L. No. 103-322, 108 Stat. 1796 (to appear as note to 28 U.S.C. § 994).

[82] U.S. SENTENCING GUIDELINES MANUAL § 3A1.1 (2000).

[83] *Id.* at §3A1.1(a).

[84] *Id.* at § 3A1.1(b)(1).

[85] *Id.*

cases applying the vulnerable victim provision have been cases in which individuals' housing rights have been threatened.[86]

In *United States v. Long*, in applying the vulnerable victim sentence enhancement, the Eleventh Circuit confronted the desperate isolation that victims of move-in violence face.[87] In *Long*, Keith Griffin, Robert Money, and Jackie Long, along with several others, burned a cross on the front lawn of the Smalls' home in the middle of the night.[88] The Smalls, a Black family, had just moved to an all-white area of northwestern Florida.[89] As the cross was burning, Robert Money fired four gunshots to let the family know that the cross was there.[90]

Defendants were charged under §§ 241 and 3631.[91] As part of their plea agreement, the defendants admitted that they had decided to burn a cross in the Smalls' yard "because of the family's race and their presence in the neighborhood."[92] The government requested at sentencing that the defendants' offense levels be enhanced two levels under the vulnerable victim adjustment.[93] Although on appeal the court rejected the government's argument that the vulnerable victim adjustment should be applied whenever the victim of a cross burning is a Black American, the court did find that in this case the enhancement could be applied.[94] According to the court, use of the enhancement was justified because the Smalls were the first and only Black family to move into the area, their home was physically isolated, and the cross was burned in the middle of the night.[95]

Though there are a variety of remedies available to prosecute move-in violence at the federal level, there are barriers to this particular avenue as well.[96] First, the appropriate Assistant Attorney General must approve prosecution. Second, all acts of anti-integrationist violence are also state crimes, and thus Justice Department rules for dual prosecution apply. U.S. Attorneys are precluded from initiating federal prosecution for substantially the same acts unless: (1) the matter has involved a substantial federal interest, (2) the prior prosecution did not vindicate the federal interest, and (3) the admissible evidence probably will be

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[86] HATE CRIMES LAW, *supra* note 50, at 189. *See, e.g.*, United States v. Long, 935 F.2d 1207 (11th Cir. 1991); United States v. Salyer, 893 F.2d 113 (6th Cir. 1989).

[87] United States v. Long, 935 F.2d 1207 (1991).

[88] *Id.* at 1209.

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.* at 1211–12.

[95] *Id.* at 1212.

[96] *See* HATE CRIMES LAW, *supra* note 50, at 50.

sufficient to obtain and sustain a conviction by an unbiased trier of fact.[97] Finally, there is the issue of awareness. Low-level hate crimes, particularly those that do not receive media attention, may not come to the attention of the local U.S. Attorney's office.

B. *State Remedies*

1. State and Local Hate Crime Statutes

In addition to federal penalties under which anti-integrationist bias-motivated violence may be punished, states and localities around the country have passed special hate crime legislation criminalizing bias motivated incidents. The dual sovereignty rule allows incidents to be prosecuted under both state and federal law.[98] Thus, though most hate crimes may be punished under federal law, most hate crime prosecutions (like most prosecutions in general) occur at the state, rather than the federal, level.[99]

Nearly all states have some form of hate or bias crime law.[100] There are several different types of state hate crime statutes. The most common type of state bias crime statutes are bias-motivated violence and intimidation laws. Bias-motivated violence and intimidation statutes, "ethnic intimidation," and "malicious harassment" make the commission of a hate crime a separate offense.[101] In such cases, if a crime already defined in the state's criminal code has been committed with racial animus, or if the defendant has selected the victim based on particular characteristics—most commonly race, color, religion, and national origin—then the defendant has committed a hate crime.[102]

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[97] DEPARTMENT OF JUSTICE, U.S. ATTORNEY'S MANUAL, 9-2.031 DUAL AND SUCCESSIVE PROSECUTION POLICY ("Petite Policy"), *available at* http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/2mcrm.htm#9-2.031 (last visited July 21, 2007).

[98] *See* United States v. Lanza, 260 U.S. 377, 378 (1922). One prominent case of anti-integrationist violence in which state prosecution failed to punish the perpetrators was *R.A.V. v. St. Paul*, 505 U.S. 377 (1992). After the Supreme Court struck the Minnesota statute at issue, the Justice Department brought charges against one of the perpetrators in *United States v. J.H.H.*, 22 F.3d 821, 823 (8th Cir. 1994).

[99] LEVIN & MCDEVITT, *supra* note 8, at 186.

[100] *Id.* at 252.

[101] *Id. See, e.g.*, 2000 Conn. Acts 00-72, §§ 1 and 2 (Reg. Sess.); MASS. GEN. LAWS ANN. ch. 265, § 39 (LexisNexis 2002); MINN. STAT. ANN. § 609.2231, subd. 4 (West 2003); N.Y. PENAL LAW §§ 240.30.3 and 240.31.2 (McKinney 2007); N.C. GEN. STAT. ANN. § 14-401.14(a) (LexisNexis 2005); OR. REV. STAT. §§ 166.155 and 166.165 (2006).

[102] *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-702.C14 (protecting race, color, religion, national origin, sexual orientation, gender or disability); CAL. PENAL CODE § 190.2(a)(16) (West 2007) (protecting race, color, religion, nationality or country of origin); CONN. GEN. STAT. ANN. § 46a-58 (West 2004) (protecting race, color, religion).

Other forms of statutes used by several states are penalty enhancement statutes, and laws that treat bias motivation as an aggravating factor in sentencing.[103] In states with a special penalty enhancement statute or an aggravated penalty statute, if a crime has been determined to have been motivated by bias, the defendant will receive an increased sentence.[104] States may also have statutes which define hate crimes in ways similar to federal legislation, as civil rights violations.[105] Finally, in situations in which crosses are burned, perpetrators have been charged under state cross-burning statutes.[106]

Several state remedies addressing bias-motivated violence have come under constitutional scrutiny. The first of these occurred in 1993 in *R.A.V. v. St. Paul*, when the Supreme Court struck down as violative of the First Amendment a St. Paul hate crime ordinance used to punish a cross burning.[107] The very next year, in *Wisconsin v. Mitchell*, the Court upheld a hate crime penalty enhancement statute.[108] In doing so, the Court limited the effect of *R.A.V.* by allowing states to create statutes aimed at the *act* of intentional selection of a victim because of his race.

2. State Criminal Law

As described in Part IIIB *supra*, anti-integrationist violence commonly includes cross burning, vandalism, and other property damage, and low-level assaults. Such incidents are, of course, common law crimes and may be prosecuted under the state criminal law. There are, unfortunately, two barriers to the prosecution of these types of crimes under the "ordinary" criminal law. The first barrier is one of police response and investigation. When they are not classified as hate crimes but rather as simple assaults and vandalism, hate crimes

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[103] HATE CRIMES LAW, *supra* note 50, at 265. *See, e.g.*, COLO. REV. STAT. § 18-9-111(2) (2006); DEL. CODE ANN. tit. 11, § 1304(a)(2) (2001); FLA. STAT. ANN. § 775.085(1) (West 2005); MINN. STAT. ANN. § 609.749 (West 2004).

[104] *See, e.g.*, ALA. CODE § 13A-5-13 (2005) (imposing additional penalties for bias-motivated offenses); MISS. CODE ANN. §99-19-307 (West 2006) (maximum penalty may be twice that authorized for the underlying offense if committed with bias); NEB. REV. STAT. § 28-111 (LexisNexis 2006) (indicating that if bias is found offenses shall be punished by imposition of the next higher penalty classification); NEV. REV. STAT. ANN. § 207.185 (LexisNexis 2006) (reclassifying designated offenses as gross misdemeanors if bias is present).

[105] *See, e.g.*, ALASKA STAT. § 11.76.110 (2006); CONN. GEN. STAT. ANN. § 46a-58 (West 2004); DEL. CODE ANN. tit. 11, § 1304(a)(1) (2001); IOWA CODE ANN. § 729.5.1 (West 2003); ME. REV. STAT. ANN. tit. 17, § 2931 (West 2003); MASS. GEN. LAWS ANN. ch. 265, § 37 (West 2003); UTAH CODE ANN. § 76-3-203.3 (2003).

[106] *See, e.g.*, *In re* Steven S., 31 Cal. Rptr. 2d 644 (Cal. Ct. App. 1994); State v. Talley, 858 F.2d 217, 226 (Wash. 1993).

[107] R.A.V. v. St. Paul., 505 U.S. 377 (1992). For discussion of the background facts in this case, see Jeannine Bell, *O Say, Can You See: Free Expression by the Light of Fiery Crosses*, 39 HARV. C.R.-C.L. L. REV. 335 (2004).

[108] Wisconsin v. Mitchell, 508 U.S. 476 (1993).

fall into the category of low-level crimes.[109] Because of their low offense level, police officers have little desire to investigate.[110] Even cross burnings have been mischaracterized as malicious mischief, vandalism, or burning without a permit.[111] In some jurisdictions, police have been reluctant to take hate crime victims' complaints seriously.[112] If police do not file an official police report or investigate, such crimes are unlikely to be charged. Even if police are shocked or are committed to investigation, if the crime occurs in the middle of the night without witnesses, the police may feel powerless to help victims or bring charges.[113]

Even if the police decide to investigate and a perpetrator is found, use of the ordinary criminal law may still present difficulties. The Jones' case presents an excellent example of how the criminal law may not accurately address incidents of move-in violence. In 1990, one night a few months after the Jones moved to a white working-class neighborhood in St. Paul, a group of skinheads burned a large cross in their front yard.[114] At four o'clock in the morning, another cross was burned in front of the apartment building across the street from the Jones' house.[115]

There were no witnesses who saw the cross placed on the Jones' front lawn. The perpetrators were discovered when one of them was overheard bragging to his friends about the cross burning, and the four perpetrators, one of whom was an adult, and three of whom were juveniles, were charged with various crimes.[116] In thinking about how best to charge the last juvenile, the prosecutor in the case evaluated several statutes: trespass, arson, vandalism, and terroristic threats.[117] Trespass, arson, and vandalism were eliminated because some of the elements of the crime were missing.[118] For instance, the prosecutor indicated that a vandalism charge would not have worked because there was not destruction of property—not even a burned spot on the Jones' grass.[119] The prosecutor decided to charge the juveniles under Minnesota's recently passed bias crimes ordinance because the adult had already pleaded guilty to the hate crimes charged and received

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[109] JEANNINE BELL, POLICING HATRED: CIVIL RIGHTS, LAW ENFORCEMENT, AND HATE CRIME 36 (2002).

[110] *Id.*

[111] SOUTHERN POVERTY LAW CENTER, *supra* note 39, at 18.

[112] *See generally* Bell, *supra* note 107; Elizabeth A. Boyd et al., *"Motivated by Hatred or Prejudice": Categorization of Hate-Motivated Crimes in Two Police Divisions*, 30 LAW & SOC'Y. REV. 819, 822 (1996).

[113] *See, e.g.*, Lederer, *supra* note 75 (noting police officers investigating cross burning indicated that because there were no witnesses, they had no suspects).

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] Laura J. Lederer, *The Prosecutor's Dilemma: An Interview with Tom Foley, in* THE PRICE WE PAY 195 (1995).

[119] *Id.*

probation.[120] One of the defendants, Robert A. Viktora or "R.A.V.," hired a First Amendment lawyer and challenged the statute, which was eventually struck down by the U.S. Supreme Court.[121]

3. State Cross Burning Statutes

In cases in which the perpetrator burns a cross, states may use cross burning statutes as a remedy. State cross burning statutes originated in the 1950s as a reaction to the use of the burning cross by the Ku Klux Klan. Such statutes may penalize cross burning in a variety of ways, either as a section of a statute that criminalizes the use of symbols in an intimidating manner[122] or as part of a statute that prohibits malicious intimidation.[123] One example of move-in violence prosecuted under a state cross burning statute is *State v. Talley*.[124] Talley, along with two other individuals, was prosecuted for having burned a cross on his own lawn in the presence of a mixed-race family who had planned to move to his neighborhood.[125] Talley had complained that "having niggers next-door" would ruin his property values.[126] He was prosecuted under Washington state's malicious harassment statute which specifically punished cross burning.[127]

Like other types of hate crime statutes, cross burning statutes have also been challenged on First Amendment grounds. In fact, such statutes briefly disappeared as a remedy for anti-integrationist violence. In the wake of the Supreme Court's decision in *R.A.V.*, Washington state's court, and a few other state courts struck down their cross burning statutes.[128] In 2003, in *Virginia v. Black*, the Court once again evaluated the constitutionality of cross burning.[129] In this case, the Court considered an appeal by the Commonwealth of the Virginia from a decision of the Virginia Supreme Court striking down Virginia's cross burning statute. Though the respondents in the case, Barry Black, Richard Elliot, and Jonathan O'Mara, had all been convicted under the statute for burning a cross, the circumstances of the cross burnings were somewhat different. Black had presided over the burning of a

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[120] *Id.*

[121] In *R.A.V. v. St. Paul*, *supra* note 107, the Supreme Court struck down the city of St. Paul's bias crime ordinance on First Amendment grounds, finding it impermissible content-based regulation.

[122] *See, e.g.*, CAL. PENAL CODE § 11411 (2007); D.C. CODE ANN. § 22-3312.02 (2001); VT. STAT. ANN. tit. 13 § 1456 (1989).

[123] *See, e.g.*, IDAHO CODE ANN. § 18-7903 (1993); MONT. CODE ANN. §45-5-221 (2003).

[124] State v. Talley, 858 P.2d 217 (Wash. 1993).

[125] *Id.* at 220.

[126] *Id.*

[127] *Id.*

[128] State v. Sheldon, 629 A.2d 753 (Md. 1993) (striking down Maryland's cross burning statute); State v. Vawter, 642 A.2d 349, 354–55 (N.J. 1994) (striking down New Jersey's cross burning statute).

[129] 538 U.S. 343 (2003).

cross at a Ku Klux Klan rally.[130] O'Mara and Elliot were convicted for having burned a cross on the lawn of the Black neighbor who had recently moved to the neighborhood.[131]

In its decision in *Black*, the Supreme Court found Virginia's statute unconstitutional not because it criminalized cross burning *per se*, but rather because, under the Virginia statute, the act of burning a cross was *prima facie* evidence of the intent to intimidate.[132] In other words, the Court allowed states to outlaw cross burning performed with intent to intimidate. Though state cross burning statutes that criminalize cross burnings undertaken with intent to intimidate were upheld, after *Black* states may not make the fact that a cross was burned prima facie evidence that this requirement has been met. In other words, there must be an independent determination based on the facts in the case indicating whether in burning a cross the defendant manifested an intention to intimidate.

Cases in which a cross is burned on the front lawn of the only Black family in an all-white neighborhood, especially when it is done soon after they have moved in, are situations in which the intent of the perpetrators seems very clear. Nevertheless, after *Black*, the Court's requiring evidence of intent to intimidate may hamper the state's ability to successfully prosecute this type of move-in violence. For instance, a number of cross-burning cases involve joking and/or drunken perpetrators who, after the fact, may insist that they never intended to cause harm.[133] Even if the cross burner is drunk or the cross has been burned as a joke or prank, in cases in which it has been burned on the lawn of the only Black family in the area, it may nevertheless send a clear message—that the family should leave the neighborhood. It is not clear whether *Black* would allow prosecution of the cross burner in such a case.

The wide variety of remedies for anti-integrationist violence includes both state and federal prosecution in many different forms—from hate crime and civil rights law to fair housing legislation. Despite the wide variety of federal remedies,

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[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *See, e.g.*, Garrison v. Conklin, 2003 Mich. App. LEXIS 337 (2003) (cross burning alleged as part of a Halloween prank); Allstate Ins. Co. v. Browning, 598 F. Supp. 421 (D. Or. 1983) (cross burner alleged action was "prank."); Police Officers for Equal Rights v. City of Columbus, 644 F. Supp. 393 (S.D. Ohio 1985) (wearing of white sheets and burning of cross as a "joke"); United States v. Hooper, 4 M.J. 830 (1978) (cross burners approach cross burned on military base as joke); *In re* Steven S., 31 Cal. Rptr. 2d 644 (1st Dist. 1994) (cross burned as a Friday the 13th joke); Neil Lewis, *A Judge, a Renomination and the Cross Burning Case that Won't End*, N.Y. TIMES, May 28, 2003, at A16 (describing drunken cross burner); People v. Carr, 81 Cal. App. 4th 837 (4th Dist. 2000) (cross burner was intoxicated); United States v. Magleby, 241 F.3d 1306 (10th Cir. 2001) (cross burner drank heavily and took prescription pain medication); United States v. Montgomery, 23 F.3d 1130 (7th Cir. 1994) (cross burner consumed alcohol prior to cross burning); United States. v. Hayward, 6 F.3d 1241 (7th Cir. 1993) (alcohol consumed prior); United States v. Whitney, 229 F.3d 1296, 1300 (10th Cir. 2000) (cross burners "drinking heavily" prior to cross burning).

such violence remains largely unaddressed. In federal cases, the responsibility for prosecuting hate crimes falls to the Justice Department, whose interest in bringing cases, commentators note, can vary with the politics of the administration.[134] For instance, a study by the Southern Poverty Law Center revealed that between 1987 and 1989, the Justice Department initiated prosecution in just thirty-one cases involving racial violence.[135] Though the precise numbers of actual hate crimes between 1987 and 1989 is unknown, in 1990 Congress passed the Hate Crime Statistics Act, mandating that the FBI collect data on hate crimes. FBI statistics on hate crime in 1991, the first year in which the agency collected data, reported roughly 3,000 anti-racist hate crimes had occurred.[136] If the number of actual hate crimes in the late eighties was anywhere near the number reported to the FBI in 1991, the Justice Department may be missing many opportunities to prosecute hate crimes.

In most hate crime cases, prosecution falls generally to the states, where there may also be difficulties. Though most states do have some sort of legislation, there are frequently problems with enforcement. For instance, victims in these types of cases do not know of the legal landscape. It therefore falls to police and prosecutors to find and then investigate these cases. The low visibility of many of the acts that comprise this type of violence means that it may be difficult for such crimes to be recognized by either state or federal authorities. The larger impact of anti-integrationist violence on the diversity of neighborhoods is considered in the next section.

IV. ASSESSING THE IMPACT OF ANTI-INTEGRATIONIST VIOLENCE ON HOUSING SEGREGATION

The number of incidents of move-in violence is partly affected by the fact that there are so many potential spaces for anti-integrationist violence. Almost by definition, move-in violence is a byproduct of U.S. housing segregation—without segregated white neighborhoods there would not be move-in violence. In fact, housing segregation by race is a problem of great magnitude in the United States. The growing racial diversity of the United States has not been matched by an increase in diversity within neighborhoods.[137] The problem of segregation is particularly severe in the case of African-Americans in comparison to whites. Though Black-white segregation declined during the 1980s, the majority of Blacks

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[134] LEVIN & MCDEVITT, *supra* note 8, at 182.

[135] *Id.*

[136] U.S. Department of Justice, FBI, Hate Crime Bias Motivations, 1991.

[137] THE LEWIS MUMFORD CENTER, ETHNIC DIVERSITY GROWS, NEIGHBORHOOD INTEGRATION LAGS BEHIND (2001), http://mumford.albany.edu/census/WholePop/WPreport/page1.html; John Iceland, *Beyond Black and White: Metropolitan Residential Segregation in Multi-ethnic America*, 33 SOC. SCI. RES. 248, 248–71 (2004).

continue to live in locations starkly isolated from those of other races.[138] The results from the 2000 U.S. Census reveal that Blacks were hypersegregated[139]—a term housing scholars use to define the most extreme form of segregation—in 28 of the 50 largest metropolitan areas in the United States.[140] Though social scientists studying the problem of segregation cannot agree on the precise origin or causes of racial segregation in the United States, they have attributed the problem to three main causes: 1) economics; 2) discrimination; and 3) the preferences of African-Americans and whites.[141]

A. *Economics*

Economic explanations locate the roots of residential segregation in market-based differences in the socioeconomic status of Blacks and whites. The absence of Blacks and other minorities in white neighborhoods is attributed to the fact that on average they are located in lower-status occupations and have less wealth and income than whites.[142] In other words, Blacks and Hispanics do not live in white neighborhoods because they are unable to afford it. Conversely, whites do not live in Black or non-white neighborhoods because they are able to afford to live in white neighborhoods, which have less crime and better social services.

One of the failures of the purely economic explanation is that it is unable to explain the fact that middle-class Blacks more frequently live in poorer neighborhoods, with more crime and fewer social services, than whites of a similar economic status. Purely economic explanations cannot account for this phenomenon since this model would predict that, if no barriers to entry exist, Blacks and whites of the same economic status would live in the same neighborhoods. Recently, especially given the experiences of middle-class Blacks, scholars have questioned the adequacy of pure economics to explain the roots of segregation.[143]

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[138] Camille Zubrinsky Charles, *The Dynamics of Racial Residential Segregation*, 29 ANN. REV. SOC. 167 (2003).

[139] Segregation is generally assessed along five dimensions: 1) the degree of *evenness* with which members of a particular race are dispersed over the geographic area; 2) the extent of racial *isolation*, characterized by the manner in which members of a particular race are distributed in the geographic area; 3) whether single-race neighborhoods are *clustered* in a metropolitan area in a way that forms a continuous enclave; 4) whether a race is *concentrated* in a single area or scattered about in the metropolitan area; and 5) whether the race being examined is *centralized* in the city's center or distributed widely along its edges. Hypersegregation is said to occur when a race is highly segregated on at least four of the five dimensions at once. MASSEY & DENTON, *supra* note 36, at 74.

[140] Charles, *supra* note 138.

[141] *Id.*; William A.V. Clark, *Ethnic Preferences and Ethnic Perceptions in Multi-Ethnic Settings*, 23 URBAN GEOGRAPHY 237 (2002); Lincoln Quillian, *Why is Black-White Residential Segregation So Persistent?: Evidence on Three Theories from the Migration Data*, 31 SOC. SCI. RES. 197 (2002).

[142] FARLEY ET AL., *supra* note 32.

[143] Qullian, *supra* note 141.

B. *Discrimination*

To say that discrimination causes segregation is to suggest that the current distribution of African-Americans in any area can be attributed to legal and extralegal "steering" practices by realtors, mortgage lenders, sellers, and landlords aimed at steering minorities away from white areas.[144] Neighbors' extralegal acts aimed at integrating residents also fall into this category. Such behavior has been recognized by scholars as having occurred in many areas of the country, from the 1950s back to the beginnings of non-white integration of white neighborhoods in the early twentieth century.[145] Whether discrimination has served as a barrier to integrating minorities since the passage of civil rights laws is contested by scholars who may contend that the very existence of antidiscrimination law means that discrimination cannot exist at levels that prevent integration.[146]

Despite the legal remedies addressing discrimination, significant evidence suggests that formal and informal discriminatory practices by whites do serve as barriers to entry for African-Americans and other non-whites wishing to move to white neighborhoods.[147] One recent study revealed that though discrimination against minorities has declined, it still constitutes a significant factor limiting non-whites' housing choices. This study, conducted by the Urban Institute for the U.S. Department of Housing and Urban Development (HUD), involved sending out 4,600 paired testers to buy or rent property in 23 metropolitan areas. The study revealed the consistent adverse treatment of Blacks and Hispanics; whites were more likely to receive information indicating that housing was available.[148] Other research has similarly uncovered racial discrimination in mortgage lending.[149] With respect to the segregation of public housing, legal scholars and courts have placed the blame squarely on discriminatory actions by HUD, which administers federal public housing.[150]

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[144] *Id.*; MASSEY & DENTON, *supra* note 36; Joe Feagin, *Excluding Blacks & Others from Housing: The Foundation of White Racism*, 4 CITYSCAPE: A J. OF POL'Y DEV. & RES. 79 (1999).

[145] MEYER, *supra* note 13; HIRSCH, *supra* note19; FARLEY ET AL., *supra* note 32; SUGRUE, *supra* note 11.

[146] *See, e.g.*, Clark, *supra* note 141.

[147] *See* JOHN YINGER, CLOSED DOORS, OPPORTUNITIES LOST: THE CONTINUING COSTS OF HOUSING DISCRIMINATION (1995); BRUCE D. HAYNES, RED LINES, BLACK SPACES: THE POLITICS OF RACE AND SPACE IN A BLACK MIDDLE CLASS SUBURB (2001); THE URBAN INSTITUTE, METROPOLITAN HOUSING AND COMMUNITIES POLICY CENTER, DISCRIMINATION IN METROPOLITAN HOUSING MARKETS: NATIONAL RESULTS FROM PHASE I HDS 2000 (2002).

[148] THE URBAN INSTITUTE, *supra* note 147.

[149] YINGER, *supra* note 147; HIRSCH, *supra* note 19; KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES (1985); MASSEY & DENTON, *supra* note 36.

[150] Florence Wagman Roisman, *Long Overdue: Desegregation Litigation and Next Steps to End Discrimination and the Segregation in the Public Housing and Section 8 Existing Housing Programs*, 4 CITYSCAPE: A J. OF POL'Y DEV. & RES. 171 (1999); LEONARD S. RUBINOWITZ & JAMES E. ROSENBAUM, CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA (2000).

There has been little examination of the effectiveness of legal remedies aimed at eradicating housing discrimination—how the Fair Housing Act works on the ground. What has been written suggests that the Fair Housing Act has not been especially effective at eliminating housing discrimination.[151] Some attribute the failure of the Fair Housing Act enforcement mechanisms to HUD, specifically noting the paucity of cases brought by the agency.[152] Others argue that the effectiveness of the Act was blunted by the refusal of Congress to include measures in the original Act that would properly insure its enforcement.[153]

C. *Preferences*

The literature on preferences attempts to explain racial and ethnic segregation by suggesting that residential mobility reflects the expressed preferences for same-race neighbors.[154] In other words, Blacks and whites remain segregated because each group prefers to live in neighborhoods where their own race dominates. Research in this vein attempts to gauge residents' preferences by using surveys to assess Black and white racial attitudes and then extrapolate them to their tolerance for neighbors of a different race. The questions asked frequently examine issues such as the respondent's views of affirmative-action and his or her perceptions of the racial composition of neighborhoods that might be attractive.[155] Extrapolation from these attitudes may be misleading, however, because white avoidance of neighborhoods with greater than a token number of Blacks may stem not just from racism, but from the fact that they attribute to such places negative characteristics—high crime rates, declining property values, and poor schools.[156]

Recent developments in the preference-based literature raise important issues for further research. For instance, much of the preference literature reveals that while whites prefer neighborhoods that contain no more than a small number of

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[151] Abraham Bell & Gideon Parchomovsky, *The Integration Game*, 100 COLUM. L. REV. 1965 (2000); GEORGE LIPSITZ, THE POSSESSIVE INVESTMENT IN WHITENESS: HOW WHITE PEOPLE PROFIT FROM IDENTITY POLITICS (1998); Nancy A Denton, *Half Empty or Half Full: Segregation and Segregated Neighborhoods 30 Years After the Fair Housing Act*, 4 CITYSCAPE: A J. OF POL'Y DEV. & RES. 107 (1999).

[152] LIPSITZ, *supra* note 151.

[153] Denton, *supra* note 151; Arthur S. Flemming, *The Politics of Fair Housing*, 6 YALE L. & POL'Y REV. 385 (1988).

[154] Clark, *supra* note 141; Michael Emerson et al., *Does Race Matter in Residential Segregation? Exploring the Preferences of White Americans*, 66 AM. SOC. REV. 922 (2001); T. Jeffrey Timberlake, *Still Life in Black and White: Effects of Racial and Class Attitudes on Prospects for Residential Integration of Atlanta*, 70 SOC. INQUIRY 420 (2000); SHERYLL CASHIN, THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM (2004).

[155] Clark, *supra* note 141, at 242.

[156] LISA BELKIN, SHOW ME A HERO: A TALE OF MURDER, SUICIDE, RACE, AND REDEMPTION (1999); Emerson et al., *supra* note 154; John R. Logan et al., *Segregation of Minorities in the Metropolis: Two Decades of Change*, 41 DEMOGRAPHY 1 (2004).

African-Americans, the majority of African-Americans tend to prefer neighborhoods that contain half whites and half minorities.[157] Other research suggests that African-Americans dislike neighborhoods in which fewer than ten percent of the residents are Black.[158] Given more scrutiny, Black preferences indicate that African-Americans do not desire racial solidarity but rather reflect the fear that they would face hostility were they to move to predominately white neighborhoods.[159] In other words, some African-Americans reject white neighborhoods because they worry that their new neighbors will be prejudiced against them.[160]

D. *Neighborhood Preferences and Move-in Violence*

Of course segregation provides the context—white neighborhoods—but segregation alone does not necessarily lead to anti-integrationist behavior. The literature on preferences combined with the little we know about the roots of move-in violence provides, at the very least a partial explanation of the sentiments that spawn violent behavior directed at integrating minorities. Despite increasing tolerance, public opinion data reveals some degree of white hostility toward African-Americans.[161]

Researchers have identified the most recent versions of white hostility as a new form of subtle prejudice, "racial resentment."[162] Though distinct from both racial prejudice and biological racism, racial resentment captures strong racially unsympathetic sentiments and predicts derogatory stereotypes.[163] This means, for example, that animosity toward Blacks is expressed in language that depicts Blacks as unwilling to try and as taking what they have not earned and therefore do not deserve.[164]

Other research has demonstrated how racial resentment plays out in the housing context. One of the most comprehensive pieces of ethnographic research on neighborhood integration was conducted in Chicago in the mid-1990s. In

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[157] FARLEY, *supra* note 32.

[158] INGRID GOULD ELLEN, SHARING AMERICA'S NEIGHBORHOODS: THE PROSPECTS FOR STABLE RACIAL INTEGRATION (2000).

[159] Maria Krysan & Reynolds Farley, *The Residential Preference of Blacks: Do They Explain Persistent Segregation?*, 80 SOCIAL FORCES 937 (2002).

[160] Susan J. Popkin et al., *Obstacles to Desegregating Public Housing: Lessons Learned from Implementing Eight Consent Decrees*, 22 J. POL'Y ANALYSIS AND MGMT. 179 (2003); URBAN INEQUALITY: EVIDENCE FROM FOUR CITIES (Alice O'Connor et al. eds., Russell Sage Foundation 2001).

[161] *See* FARLEY, *supra* note 32, at 222–23 (showing whites' endorsement of stereotypes); DON R. KINDER & LYNN M. SANDERS, DIVIDED BY COLOR: RACIAL POLITICS AND DEMOCRATIC IDEALS 107 (1996) (showing data depicting white racial resentment).

[162] KINDER & SANDERS, *supra* note 161, at 93–98.

[163] *Id.*

[164] *Id.* at 124.

"There Goes the Neighborhood," William Julius Wilson and Richard Taub describe the result of in-depth interviews with residents of the "Beltway," a predominately white, largely working-class Chicago neighborhood.[165] Because it was still in the city, and city workers were required to live within the city limits, the neighborhood attracted large numbers of police officers and firefighters. In addition to its reputation as a working-class, "cops and firefighters" neighborhood, the Beltway is described as a relatively close-knit community with a high degree of stability.[166]

Though it had a reputation for high stability, in the decade between 1990 and 2000, the Beltway began to experience significant racial change as Blacks and Latinos moved into a neighborhood that had been 95% white in 1980.[167] The white population declined slightly, but most of the demographic change was caused by a large increase in the Latino population, which grew 21% between 1990 and 2000.[168] A tiny increase in the Black population, from a handful to 300 residents, though less than 1% of the population, was described as "symbolic."[169] Members of the community may have considered the increase in the Black population in their neighborhood significant because they connected it to advantages they felt Blacks had been able to extract from city officials. Some residents clearly believed that Black gains were at the expense of whites. One respondent told interviewers:

> They're talking about bringing contractors to do our jobs. . . . This whole city is going down the fucking toilet. . . . If [Mayor Daley's] dad knew what he was doing he would turn in his grave. Now old man Daley, he was for the blue-collar worker. Used to be that when you had those jobs you had 'em for life and you could raise a family. It's all different now, taxes and all that shit is killing the workingman. We're paying to support all the niggers and minorities . . . [i]t's all fucked up and I'll tell ya why: too many niggers an' Mexicans an' minorities in this city.[170]

Another reason that racial change may have felt so destabilizing was that whites in Beltway may have seen the neighborhood as somewhat of a refuge, located near the edge of the city and in one of the last affordable, predominately white neighborhoods. Beltway residents described themselves as having been

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[165] WILLIAM JULIUS WILSON & RICHARD P. TAUB, THERE GOES THE NEIGHBORHOOD: RACIAL, ETHNIC AND CLASS TENSIONS IN FOUR CHICAGO NEIGHBORHOODS AND THEIR MEANING FOR AMERICA (2006).

[166] *Id.* at 17.

[167] *Id.*

[168] *Id.*

[169] *Id.*

[170] *Id.* at 23–24.

driven out of other neighborhoods by minorities. As one longtime Beltway resident described it:

> What you have to understand is that for many people they had to move once or twice . . . . When Martin Luther King marched on Chicago, he went to places like Marquette Park and so on. People in places like Gage Park, you know . . . just left. So, many people who live here had to move once, twice.[171]

The arrival of people of color to the Beltway neighborhood was not just disliked, but also feared. White neighborhood residents worried that housing integration would increase crime in the neighborhood, increase poverty, cause a decrease in property values, and lead to the worsening of schools. In general, integration would lead to the decline of the entire neighborhood.[172]

Ethnographic research reveals that Beltway residents' desire to live in neighborhoods where minorities were absent is shared with residents living in all-white neighborhoods in other cities.[173] For instance, one study of white neighborhood youths from the Bensonhurst and Gravesend neighborhoods in Brooklyn, similarly close-knit, mostly white communities, revealed the youths had much in common with white Beltway residents. The youths felt under siege from minorities. The election of a Black mayor, David Dinkins, was viewed as leading to Blacks taking over the city. "You know, Italians used to run the city. We didn't have any problems 'cause we had political juice [power]. Now the Blacks have taken over, and we don't get nothin' from the politicians."[174]

The belief that Blacks cause crime was another view shared by Brooklyn youth and Beltway residents. Though they chose to deal with it differently, the Brooklyn youth viewed the neighborhood as their turf, considering it as their collective obligation to defend their territory against Blacks.[175] They also suggested that these views were commonly held in their neighborhood. As one youth told the researcher, "If a white guy walks my block, nobody will say anything to him. But if the Black guy walked onto my block everybody puts their head out the window to make sure he leaves the block."[176]

The precise relationship between desiring neighborhoods in which there are few people of color and committing crimes against them when they move in is unclear. The literature on move-in violence and segregation does, however, suggest that some whites who are fiercely protective of their neighborhood spaces

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[171] *Id.* at 18.

[172] *Id.* at 18–19.

[173] *See* REESER, *supra* note 44; Pinderhughes, *supra* note 44; Green et al., *supra* note 44.

[174] Pinderhughes, *supra* note 44, at 484.

[175] *Id.* at 485.

[176] *Id.*

will engage in acts of violence to discourage minority incursions. This may be more likely to happen in cases in which the neighborhood is close-knit or has a particular ethnic identity that residents feel fiercely driven to protect.

At this point researchers have not identified the precise causes of housing segregation that create a context for move-in violence. Explanations that place the blame on economics fail to account for the experiences of middle-class Blacks who tend to live in neighborhoods that are less diverse than their racial tolerance scores might suggest and are poorer than they can afford. Discrimination-based explanations fail to account for the presence of civil rights law and moreover have been unable to provide evidence of the level of discrimination that would be required to cause such a high degree of segregation.

The key to explaining such a high level of segregation may lie in the following preference-based explanations. As we know, many whites are not willing to live in diverse neighborhoods because they fear crime, poverty and a lack of social services associated with such spaces. Minorities, particularly African-Americans, on the other hand, are less willing to live in white neighborhoods because they fear white hostility and the violence associated with it. The move-in violence literature suggests that this may be a realistic fear indeed.

In order to craft the appropriate legal responses to any discrimination or violence that serves as a barrier to non-white in-migration, we must improve our understanding of the factors that shape behavior in this context. Though there is a history of anti-integrationist violence and there are experiences that continue to the present day, much of minority integration of white neighborhoods is peaceful. Thus, at this point we do not know specifically when or what causes low-level white hostility to escalate into violence. The existing research is similarly unable to tell whether white attitudes seeming to reject neighborhoods in which more than a token of minorities live translates into hostility toward new non-white neighbors. Further research is needed on the nature and extent of white hostility toward African-Americans and other minorities who move into white neighborhoods and ultimately the effect of this hostility on segregation.

V. ADDRESSING THE PROBLEM OF MOVE-IN VIOLENCE

The problem of move-in violence is complex. Addressing the problems faced by minority families who attempt to move to white neighborhoods and find crimes committed against them requires a solution on two fronts—legislation to punish perpetrators and enforcement of existing remedies. Until there is movement on both of those fronts, move-in violence and other acts of anti-integrationist terror are likely to continue.

A. *The Legislative Challenge—Separate Bias Crime Statutes*

Though federal remedies exist, for a variety of reasons most hate crimes are prosecuted at the state level. In order to successfully prosecute individuals for move-in violence, states must have statutes specifically aimed at bias-motivated crime. The use of the ordinary criminal law will not motivate police officers to treat hate crimes as important. Because acts of move-in violence are generally low-level crimes, such incidents simply will not be investigated, and therefore cannot be prosecuted.

The creation of separate statutes to punish bias-motivated crime has been, and remains controversial. Hate crime legislation has been fiercely attacked by critics, who have leveled doctrinal, practical, empirical and purely philosophical critiques at hate crime legislation. The largest category of objections to hate crime legislation is purely doctrinal, contending that hate crime legislation is not justified because it punishes thought and in doing so violates the First Amendment.[177] From the perspective of such critics, when evidence of motivation for the crime comes from words—slurs or epithets used during the crime—the defendant is being punished for his racist beliefs, which are protected by the First Amendment.

Related to this argument is a practical one. Some critics argue that hate crime legislation is flawed because the motivation in hate crime cases is impossible to discern.[178] Because motivation is so complex, and because so many individuals may have mixed motivations, you just cannot tell precisely *why* someone committed a crime.[179] Thus, the argument goes, they should not be held accountable for having committed a bias crime. Sometimes these arguments are predicated on psychological theory.[180]

Closely related to these practical concerns regarding locating the perpetrators' motivation are empirical ones regarding the ability of law enforcement officers to identify bias. Some critics have argued that police officers are unable to separate hate crime, which the state may regulate, from constitutionally protected hate

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[177] *See, e.g.*, Susan Gellman, *Sticks and Stones Can Put You in Jail, but Words Can Increase Your Sentence? Constitutional and Policy Dilemmas of Ethnic Intimidation Laws*, 39 UCLA L. REV. 333, 359 (1991); Brian S. MacNamara, *New York's Hate Crimes Act of 2000: Problematic and Redundant Legislation Aimed at Subjective Motivation*, 66 ALB. L. REV. 519 (2003) (arguing that New York's hate crimes statute violates state free speech guarantees).

[178] *See* Phyllis B. Gerstenfeld, *Smile When You Call Me That!: The Problems with Punishing Hate-Motivated Behavior*, 10 BEHAV. SCI. & L. 259, 270 (1992).

[179] *See, e.g.*, Joshua S. Geller, *A Dangerous Mix: Mandatory Sentence Enhancements and the Use of Motive*, 32 FORDHAM URB. L.J. 623 (2005) (criticizing hate crime statutes because of their focus on the crimes' motive).

[180] *See, e.g.*, Anne B. Ryan, *Punishing Thought: A Narrative Deconstructing the Interpretive Dance of Hate Crime Legislation*, 35 J. MARSHALL L. REV. 123 (2001) (using narrative psychology to argue that the "arbitrary nature of words and language" makes the subjective task of determining motive impossible and unconstitutional).

speech.[181] In other words, the worry is that the use of a slur can get one arrested for a hate crime.

Supporters of hate crime legislation have countered these arguments in a variety of ways. The doctrinal issues have largely been settled by the Supreme Court, which has upheld hate crime legislation, ruling in *Wisconsin v. Mitchell* that in punishing bias *motivation*, rather than hate speech, hate crime statutes were similar to other statutes in the criminal law and do not violate the First Amendment.[182] Those in favor of bias crime legislation have pointed out that additional penalties for bias-motivated violence have been justified by the increased level of harm caused by such crimes.[183]

The existence of move-in violence and its prevalence provides an additional justification for current legislation. As this article has suggested, even in the current climate of racial tolerance, crimes directed at minorities who have moved to white neighborhoods remain a severe problem. When it occurs, such violence may come in the form of small acts of neighborhood terrorism—vandalism to cars, broken windows and other property damage, harassment and intimidation. Families at whom such crimes are directed may be isolated, as newcomers, and as the only persons of color in the neighborhood. Even if they do turn to law enforcement officers for help, the police may be reluctant to investigate such low-level crimes, especially when the victim is not able to identify the perpetrator.

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[181] *See, e.g.*, JAMES B. JACOBS & KIMBERLY POTTER, HATE CRIMES: CRIMINAL LAW AND IDENTITY POLITICS 92–100 (1998); Gellman, *supra* note 177, at 364–65; Gerstenfeld, *supra* note 178; *but cf.* Jeannine Bell, *Deciding When Hate Is a Crime: First Amendment Police Detectives, and the Identification of a Crime*, 4 RUTGERS RACE & L. REV. 33, 62–71 (2002) (arguing that police officers are able to separate constitutionally protected hate speech from unprotected evidence motivation for hate crime).

[182] Wisconsin v. Mitchell, 508 U.S. 476, 485–86 (1993).

[183] *See, e.g.*, FREDERICK M. LAWRENCE, PUNISHING HATE: BIAS CRIMES UNDER AMERICAN LAW (Harvard Univ. Press 1998) (arguing that hate crimes cause greater harm to victims and hate crimes legislation sends an important symbolic message); Andrew E. Taslitz, *Condemning the Racist Personality: Why the Critics of Hate Crimes Legislation are Wrong*, 40 B.C. L. REV. 739 (1999) (recognizing the greater harm of bias-motivated violence); Jason A. Abel, *Americans under Attack: The Need for Federal Hate Crimes Legislation in Light of Post-September 11 Attacks on Arab-Americans and Muslims*, 12 ASIAN L.J. 41 (2005) (arguing that hate crimes cause greater harm than other crimes); Kenworthey Bilz & John M. Darley, *What's Wrong with Harmless Theories of Punishment*, 79 CHI.-KENT L. REV. 1215 (2004) (using a retributivist and constructivist approach to argue that hate crimes cause greater harm); Allison Marston Danner, *Bias Crimes and Crimes Against Humanity: Culpability in Context*, 6 BUFF. CRIM. L. REV. 389 (2002) (positing that the defendant's action must be viewed in a social context and the defendant should be punished for contributing to discrimination); Dhammika Dharmapala, *Penalty Enhancement for Hate Crimes: An Economic Analysis*, 6 AM. L. & ECON. REV. 185 (2004) (using economic analysis to show that hate crimes lead to greater social harm); Troy A. Scotting, *Hate Crimes and the Need for Stronger Federal Legislation*, 34 AKRON L. REV. 853 (2001) (stating that hate crimes impact not only the victim but also a broader community); Megan Sullaway, *Psychological Perspectives on Hate Crime Laws*, 10 PSYCHOL. PUB. POL'Y & L. 250 (2004) (arguing that hate crimes cause greater harm than other crimes and that critics' use of psychology is inappropriate).

Without recourse, the violence is likely to continue, and the victim is likely to leave the neighborhood.

Hate crime legislation provides one of the most effective remedies for states wishing to address bias-motivated violence that occurs upon moving to a neighborhood. For a variety of reasons, the use of hate crime legislation in the neighborhood context is especially justified. In the context of anti-integrationist and move-in violence, the perpetrators' motive is crystal clear—he or she wants the people of color to move out because he or she wants the neighborhood to remain white.

B. *The Enforcement Issue*

Part of the reason that specialized hate crime statutes are superior to the ordinary criminal law is that many of the statutes have motive requirements and require police officers to gather evidence of what motivated the crime. This is not a typical function for police officers, and thus, many police departments have created specialized units for bias crime.[184] Such units have the function not only of gathering evidence of motivation so that perpetrators may be charged, but also the task of finding perpetrators—something that is notoriously difficult, since victims and perpetrators generally do not know each other.[185] These units may spread publicity about the existence of bias crime legislation, so the victims may have greater awareness that such behavior is illegal. Finally, specialized hate crime units may also work at preventing move-in violence from occurring by conducting proactive patrols of neighborhoods to which minorities are moving.[186]

Of course, the existence of hate crime legislation in and of itself will not necessarily address anti-integrationist violence. It is crucial that legislation be enforced, and while the legislation creates an incentive for police departments to create bias crime units, this does not mean that in every jurisdiction that has a bias crime statute, such legislation will be enforced. Any specialized police bias crime unit must be supported by a prosecutor's office that is committed to bringing charges in cases where conviction is not assured. The local court system must also support the prosecution of anti-integrationist violence. If judges see the harassment of minorities moving to white neighborhoods as "free speech," or legitimate behavior on the part of individuals who want to control their turf, then few defendants will be convicted of hate crimes. In order for bias-motivated violence to effectively be addressed by hate crime statutes, each of these forces—

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[184] *See, e.g.*, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STAT. SPECIAL REP., POLICE DEPARTMENTS IN LARGE CITIES, 1990-2000 (2002) (showing that according to a survey, 26% of police departments operated a special unit with full-time personnel for bias related crimes), *available at* http://www.ojp.usdoj.gov/bjs/pub/ascii/pdlc00.txt (last visited July 21, 2007).

[185] LEVIN & MCDEVITT, *supra* note 8, at 12.

[186] *See, e.g.*, JEANNINE BELL, POLICING HATRED: LAW ENFORCEMENT, CIVIL RIGHTS, AND HATE CRIME (2002) (describing police patrols and support of minorities who moved to white neighborhoods).

police, prosecutors, and judges—must be committed to taking seriously charges of bias-motivated violence.

The stakes of not correcting problems with legislation or enforcement may be quite high. If hate crimes are providing such a disincentive that minorities are reluctant to choose neighborhoods they might otherwise, it is imperative that we make corrections that will allow states to fully address neighborhood hate crimes. Beyond the issue of fully protecting individuals' housing rights and allowing them to move to neighborhoods where there may be less crime, there is the effect of move-in violence on housing segregation. Refusing to effectively harness the power of the State may lead to the continued re-segregation of this country, where whites and minorities increasingly occupy entirely separate neighborhood spaces.